

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “SMC”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.199/M/2022
Assessment Year: 2011-12**

M/s. Bonny Creation Pvt. Ltd., 9-C, TN Malvi Compound, J.B. Marg, Nr. Mun School, Elphinstone Bridge Road, Parel East, Maharashtra– 400 012 PAN: AACCB4006A	Vs.	Income Tax Officer, Ward-9(2)(2), Room No.601A, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ashok Mehta, A.R.
Revenue by : Shri Ashish Kumar, D.R.

Date of Hearing : 04 . 07 . 2022
Date of Pronouncement : 12 . 07 . 2022

O R D E R

Per Kuldip Singh, Judicial Member:

The appellant, M/s. Bonny Creation Pvt. Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 07.12.2021 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)) qua the assessment year 2011-12 on the grounds inter alia that:

“1. The Ld. CIT(A), National Faceless Appeal Centre has erred in confirming the addition of Rs.5222564/- without appreciating the factual position, ignoring the written submission and remand report submitted by the ITO Ward 9(2)(2) to the CIT(A)-16 on 18/02/2019

through Additional CIT, Range 9(2) Mumbai and explanations of the appellant.

2. On the facts and circumstances of the case the Ld. CIT(A), National Faceless Appeal Centre has failed to appreciate the documentary evidences furnished for proving the genuineness of the parties as confirmed in the remand report copy of which was also part of the submission to CIT(A), National Faceless Appeal Centre and was submitted on 23rd January 2021.

3. Without prejudice to Ground nol and Ground no. 2, CIT(A), National Faceless Appeal Centre has not provided Draft Order to Assessee before passing the Order as required under National Faceless Appeal Scheme. Consequently, the order passed by CIT(A), National Faceless Appeal is bad in law.

4. The appellant prays that the above additions made by the assessing officer and confirmed by the CIT(A) deserves to be deleted.”

2. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee is into the business of manufacturing of readymade garments. On the basis of information received from Director General of Income Tax (DGIT) (Investigation), Mumbai highlighting the list of hawala operators/dealers who are into the activities of issuing bogus bills without affecting any delivery of goods. Assessee has obtained bogus bills from Sudha Corporation, a hawala operator to the tune of Rs.38,250/-. On the basis of said information assessment has been reopened after recording the reasons by initiating the proceedings under section 148 of the Income Tax Act (for short ‘the Act’). During the assessment proceedings, in order to examine the genuineness of the purchases claimed by the assessee from suppliers notices under section 133(6) of the Act were issued to 20 parties from whom assessee claimed to have made a purchase of Rs.80,81,176/- out of whom 10 clients were served but they have not filed any reply and in case of other dealers notices were

received back unserved. Declining the contentions raised by the assessee AO proceeded to make an addition of Rs.10,14,928/- being the profit element @ 12.5% of the total bogus purchases of Rs.81,19,426/- and thereby framed the assessment under section 143(3) r.w.s 147 of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has restricted the addition to Rs.51,84,314/- and Rs.38,250/- from 11 parties and Sudha Corporation respectively by deleting the addition of Rs.28,96,862/- by partly allowing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. The Ld. A.R. for the assessee challenging the impugned order passed by the Ld. CIT(A) contended inter alia that Assessing Officer (AO) was duly provided with telephone numbers of the suppliers but no efforts have been made by the AO to verify the said purchases; that during the appellate proceedings remand report was called which has not been considered by the Ld. CIT(A). However, on the other hand, the Ld. D.R. for the Revenue to repel the arguments addressed by Ld. A.R. relied upon the order passed by Ld. CIT(A).

6. When we examine the paper book running into 245 pages filed by the assessee, remand report was called by Ld. CIT(A)-16 during appellate proceedings which was duly submitted by the AO vide letter dated 18.02.2019 available at page 1 & 2 of the paper book. Assessee has also filed some objections to the remand report available at page 5 & 6 of the paper book. But may be due to transfer of the case to the National Faceless Appeal Centre (NFAC) remand report and submissions made by the assessee have not been looked into by the Ld. CIT(A) to decide the issue in controversy, rather Ld. CIT(A) proceeded on the basis of assumptions and surmises to confirm substantive part of the additions and to delete the remaining part thereof. To substantiate the cause of justice, we are of the considered view that the impugned order passed by the Ld. CIT(A) is required to be set aside to be remitted back to Ld. CIT(A) to decide afresh after considering the remand reports and explanation submitted by the assessee available at page 1 to 5 of the paper book by providing opportunity of being heard to the assessee. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12.07.2022.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 12.07.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.